

## **REMARKS**

### **STATUS OF THE CLAIMS.**

Claims 2-6, 9-20, 23, 25, 26, and 43-45 are pending with entry of this amendment, claims 1, 7, 8, 21, 22, 24, 27-32, and 34-42 being cancelled herein, and claims 43-45 being added. Claims 2, 4-6, 9-11, 15-20, 23, 25, and 26 are amended herein. These amendments introduce no new matter. The specification has been amended to incorporate text from Appendices A and B into the Brief Description of the Drawings and as new Example 5. Support for new claim 43 is found in the specification at least at page 8, lines 20-22. Support for new claims 44 and 45 is found at least in original claim 1.

### **ELECTION/RESTRICTION.**

Pursuant to a restriction requirement made final, Applicants cancel claims 21, 22, 24, 27-32, and 34-43 with entry of this amendment. Please note, however, that Applicants reserve the right to file subsequent applications claiming the canceled subject matter and that the claim cancellations should not be construed as abandonment or agreement with the Examiner's position in the Office Action.

### **DRAWINGS.**

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The Examiner noted that Appendices A and B contained figures and figure descriptions together. As the Examiner requested, the figure descriptions have been inserted into the Brief Description of the Drawings section of the specification. Additional text in Appendix B has been added to the specification as Example 4. In addition, this Amendment is accompanied by formal drawings corresponding to the figures from Appendices A and B. As these drawings are in color, they are provided in triplicate, together with a Petition for Acceptance of Color Drawings under 37 C.F.R. § 1.84(a), a black-and-white photocopied set of the color drawings, and the required specification amendment and fee.

### **CLAIM OBJECTIONS.**

Claim 23 was objected to for depending from non-elected base claims 21 and 22. Office Action, page 3. To overcome the objection, claim 23 has been rewritten in independent form, incorporating elements previously recited in claim 21. Withdrawal of the objection is therefore respectfully requested.

**35 U.S.C. §112, FIRST PARAGRAPH.**

Claims 1-6, 8-20, 23, 25, and 26 were rejected under 35 U.S.C. §112, first paragraph, for lack of enablement. Office Action, page 3. The rejection is respectfully traversed.

In particular, the Examiner stated that “the specification, while being enabling for an artificial tissue comprising a support matrix, microvascular endothelial cells from a first animal, and connective tissue from a second animal, and/or epithelial cells from a third animal, . . . wherein the first, second and third animal are the same, does not reasonably provide enablement for such an artificial tissue wherein the first, second and third animal are different.” Of the pending rejected claims, only claim 23 is independent. As amended, claim 23 recites that “the cells are from the same species.” Accordingly, this aspect of the enablement rejection is now moot.

The Examiner also based the rejection on the ground that, allegedly, the specification fails to enable an artificial tissue comprising a microvessel, wherein the microvessel produces a blood cell. *Id.* This requirement is found only in claims 16 and 17. The Examiner believes that “the specification fails to demonstrate that the artificial skin can produce blood cells in an *in vitro* setting.” *Id.* at 5. However, the application contains a working example that, in fact, includes such a demonstration. Specifically, Appendix A stated:

When the endothelial cells develop into larger vessels we observe the presence of leukocytes inside these vessels (A). (B-E) High magnification of regions in (A) to illustrate the presence of these leukocytes. (F) Blood cell immunolabeled with an antibody for macrophage scavenger receptor (mSR), a specific protein for these leukocytes. (G) Blood cells stained with an antibody to CD68 also a cell surface marker for mononuclear leukocytes. Summary: Under our culture conditions, endothelial cells are able to differentiate into mononuclear leukocytes.

This text has been incorporated into the specification at page 4, after line 19 (as the description for Figure 16). Accordingly, Applicants respectfully submit that the specification fully enables the

pending claims. Withdrawal of the § 112, first paragraph rejection is therefore respectfully requested.

**35 U.S.C. §102.**

Claims 1-4, 6, 7, 9, 11, 12, 15, 18, 19, 20, 25, and 26 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by Black *et al.* (1998, FASEB J. 12, 1331-1340). Office Action, page 6. Claims 1 and 7 have been canceled. The remaining rejected claims depend, directly or indirectly, from claim 23, which was not rejected over Black. Added claims 43-45 also depend, directly or indirectly, from claim 23 and are therefore also free of the § 102 rejection over Black. Accordingly, Applicants respectfully request withdrawal of the § 102 rejection.

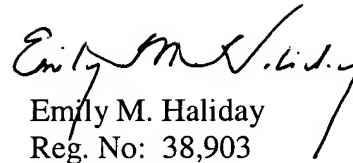
**CONCLUSION.**

In view of the foregoing, Applicants believes all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested. Should the Examiner seek to maintain the rejections, Applicants request a telephone interview with the Examiner and the Examiner's supervisor.

If a telephone conference would expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (510) 769-3509.

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Respectfully submitted,

  
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